IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

Bhanwar Lal vs. The Gram Panchayat, Dhoondhla & ors.

S.B. Civil Second Appeal No.98/1982 against the judgment and decree dated 5.3.1982 passed by the Additional Civil Judge, Pali at Sojat in Civil Appeal No.4/1980.

Date of Judgment: May 01 , 2006.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr. Dalpat Raj Bhandari, for the appellant.
Mr. S.D. Rajpurohit, for the respondents.

BY THE COURT:

Heard learned counsel for the parties.

The appellant is aggrieved against the judgment and decree passed by the first appellate court dated 5.3.1982 by which the first appellate court reversed the judgment and decree of the trial court dated 13.12.1976 and dismissed the suit of the appellant-plaintiff.

Brief facts of the case are that Dalpat Raj and Ravindra Singh were the alleged owners of the house in dispute situated in the Village Dhoondhla. The plaintiff claimed that the said house was purchased by him from said Dalpat Raj and Ravindra Singh(defendant nos.10 and 11) by registered sale-deed dated 26.3.1968 after paying consideration of Rs.4000/-. The Sarpanch, Gram Panchayat (defendant no.1) and the

villagers of the Gram Panchayat, Dhoondhla threatened to dis-possess the plaintiff on 7.4.1968 but they failed in dis-possessing the plaintiff but on 8.6.1968, defendant no.2 in the capacity of Sarpanch as well as the villagers, encroached upon the house. Therefore, the plaintiff served a notice upon the Gram Panchayat and the Sarpanch under Section 79 of the Rajasthan Panchayat Act, 1953 and thereafter filed the suit for possession after seeking permission under Order 1 Rule 8 C.P.C. The defendants submitted written statement and pleaded that the house in dispute is a public property and the Gram Panchayat as well as the villagers are in possession of the said house since last 20 years. It is alleged that the plaintiff was never put in possession by any body including by the vendors (defendant nos.10 and 11). Several other pleas were taken by the defendants, but they are not very much relevant for the purpose of deciding this appeal.

The trial court held that the suit property was sold by defendant nos.10 and 11 to the plaintiff by registered sale-deed. The trial court also considered the fact that though sale-deed purported to have been executed through power of attorney but since vendors defendant nos.10 and 11 also signed the sale-deed dated 26.3.1968, therefore, the sale-deed is executed by the real owners of the property (defendant nos.10 and 11- Dalpat Raj and Ravindra Singh). The trial court, therefore, decreed the suit of the plaintiff for possession of the property in dispute

by judgment and decree dated 13.12.1976.

Being aggrieved against the judgment and decree of the trial court dated 13.12.1976, the defendants preferred regular first appeal which was allowed by the first appellate court vide judgment and decree dated 5.3.1982. The first appellate court held that power of attorney holder had no authority to execute the sale-deed and he had only authority to present already executed sale-deed by the vendors before the Sub-Registrar for registration. In view of the above, the sale-deed dated 26.3.1968 is not legal and has not passed on the title of the property to the plaintiff. In view of the above findings, the first appellate court allowed the appeal of the defendants and set-aside the judgment and decree of the trial court dated 13.12.1976 and dismissed the suit of the plaintiff. Hence this second appeal.

The second appeal was admitted by this Court on 19.7.1982 while framing the following substantial question of law:-

> *"Whether the appellate court was right in holding that the document Ex.3 was void and was not registered in accordance with law."*

The learned counsel for the appellant vehemently submitted that the sale-deed Ex.3 has been signed by the owners of the property and the owners of the property admitted their signatures on the sale-deed Ex.3. The sale-deed Ex.3 is the registered document, therefore, the plaintiff acquired the title to the property by sale-deed Ex.3. According

to the learned counsel for the appellant even if there is any defect in registration of the document then that defect is an irregularity. So far as the language used in the sale-deed, if found to be defective, then that defect cannot be fatal because of the simple reason that no ambiguity in the document can be explained by oral evidence, for which the learned counsel for the appellant relied upon the judgment of the Privy Council delivered in the case of Hussonally Sullenmanji v. Tribhowandas Mangaldas Nathubhai and others (AIR 1921 Privy Council 40). It is also submitted that the ambiguity in the deed cannot be fatal in view of the decision of the Privy Council delivered in the case of Watcham vs. Attorney General on behalf of the Govt. of the East Africa Protectorote (AIR 1918 Privy Council 280). Yet another judgment relied upon by the learned counsel for the appellant is reported in the case of Hussain v. Sarup and another (AIR 1931 Oudh 54), wherein also Oudh High Court held that the oral evidence can be allowed to make the intention of the parties clear with respect to the execution of the document.

I considered the submissions of the learned counsel for the appellant and perused the record also.

Before considering legal aspect of the matter, it will be beneficial to look into the facts of the case afresh, The plaintiff's case is that the owners of the property are defendant nos.10 and 11- Dalpat Raj and

Ravindra Singh. They gave power of attorney (Ex.5) to one Shri Sohan Raj on 22.3.1968. In the power of attorney Ex.5, it is mentioned that defendant nos.10 and 11 sold the property in dispute to plaintiff Bhanwar Lal and for that purpose, a sale-deed *has already been executed*. Though there is no date given of the said sale-deed but in power of attorney it is clearly mentioned that the sale-deed has already been executed which clearly means execution of the sale-deed prior to execution of the power of attorney, which can be at any time but before 22.3.1968 or even on 22.3.1968 but before execution of power of attorney. This fact has been made further clear as in the Ex.5, in addition to above, it is also mentioned that the sale-deed has been executed on stamp paper of Rs.138/- and on this sale-deed the power of attorney holder has put his signatures. The power of attorney holder was authorised to present this sale-deed already executed by the sellers themslves before the District Registrar, Pali or the Sub-Registrar, Marwar Junction. The power of attorney was authorised to admit the signatures already put on the already executed sale-deed. The power of attorney himself has not been given any power to execute the sale-deed in favour of the vendee (plaintiff-Bhanwar Lal) by the power of attorney Ex.5. He has also not been given any power to present the document executed subsequent to the date 22.3.1968 before the Sub-Registrar, Marwar Junction or the District Registrar, Pali.

Ex.3 is the sale-deed which according to the plaintiff-appellant, is the document executed and got registered by the vendors in favour of the plaintiff-vendee. Ex.3 is dated 26.3.1968. Therefore, the sale-deed Ex.3 is not the document for which Power of Attorney holder was given authority by the principle to execute the document nor he was authorised to present it for registration.

Apart from above, I do not find any force in the submissions of the learned counsel for the appellant that it is a case of ambiguity in the document only or giving wrong description of the parties in the deed and those defects can be explained by oral evidence. In Ex.3, there is no ambiguity with respect to the parties and the executant. The defect in description of the property in a registered document in given circumstances can be explained by oral evidence in case it will not destroy the document itself. In the present case, the power of attorney is clear and unambiguous. By power of attorney dated 22.3.1986, the vendors clearly authorised the power of attorney holder to present the sale-deed already executed by them in favour of the plaintiff before the Sub-Registrar or the District Registrar for registration of the document and authorising him to admit the signatures of the vendors and admit the sale of the property on behalf of the vendors, but the power of attorney dated 22.3.1968 has not authorised the power of attorney himself to execute the sale-deed. If the power of attorney dated

26.3.1968 is construed to authorise the power of attorney himself to execute the sale-deed subsequent to 22.3.1968 then that will be contrary to act already done by the principle themselves.

So far as the signatures of vendors in the sale-deed Ex.3 is concerned, those signatures cannot make the vendors as persons executing the sale-deed Ex.3 in view of the language employed in Ex.3. It will be worthwhile to mention here that in the sale-deed Ex.3, name of Dalpat Raj has been shown as third party name and not as first party name. In the sale-deed itself, two attesting witnesses clearly put endorsement that they are signing the sale-deed as attesting witnesses on instructions of the power of attorney Shri Sohan Raj and they have not signed the sale-deed as attesting witnesses for Dalpat Raj and Ravindra Singh. The above facts are not the facts making sale-deed Ex.3 an ambiguous document. There is no ambiguity that Ex.3 was executed by the power of attorney Shri Sohan Raj on 26.3.1968 on behalf of Dalpat Raj and Ravindra Singh and for which he had no authority by virtue of the power of attorney dated 22.3.1968. Therefore, the first appellate court was right in holding that the plaintiff is not owner of the property as the sale-deed Ex.3 has not been validly presented and registered, apart from the fact that not executed by the authorised person.

The learned counsel for the appellant further relied upon the

judgment of this Court delivered in the case of Khetmal v. Chhaganraj and another (AIR 1968 Raj. 123). While considering Sections 34, 35 and 87 of the Registration Act, 1908, this Court held that where non-appearance of some of the executants was only casual, inadvertent or accidental and there are materials on record to indicate that they had no intention to prevent the registration of the document being under an impression that admission by some of the other executants would be sufficient for registration, the defect is one of pure procedure not vitiating the registered deed. Yet another judgment relied upon by the learned counsel for the appellant is reported in the case of Babu Lal v. Kanhaiya Lal (1974 RLW 370), wherein this Court held that sale by person holding power of attorney which was not valid, being not registered, new power of attorney duly registered ratifying the act of sale of power of attorney holder, it was held by this Court that sale-deed being duly registered ratification validated the sale from the date of the sale.

Further the learned counsel for the appellant relied upon the judgment of the Hon'ble Apex Court delivered in the case of Sri Sri Sri Kishore Chandra Singh Deo v. Babu Ganesh Prasad Bhagat and others (AIR 1954 SC 316), wherein Hon'ble the Apex Court considered the dispute relating to the procedure not affecting the jurisdiction of the registering authority.

The judgments relied upon by the learned counsel for the appellant, referred above, have no application to the facts of this case because of the simple reason that in this case, defect is not that a validly executed deed was presented for registration by wrong person but illegality is that the sale-deed had been executed by person who had no authority to do so and the action has not been ratified nor the document was re-registered which could have been done under Section 23A of the Registration Act, 1908. The Power of Attorney also had no authority to admit the signature of owners of the property on the sale-deed executed on 26.3.1968 before the Registering Authority. That act of the power of attorney holder was contrary to the authority given to the power of attorney holder as well as against the express wishes of the vendors and that cannot be treated to be defect in the procedure. Had it been a case of wrong description of property in the sale-deed already executed by the vendors or wrong description of the person etc., that defect, depending upon facts, could have been cured by oral evidence by showing that the property is certain, description is wrong or who were the real parties intending to sell the property. Therefore the authorities relied upon by the learned counsel for the appellant have no application to the facts of the present case.

In view of the above, I do not find any merit in this appeal and the same is hereby dismissed.

(**PRAKASH TATIA),J.**

mlt.